

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SOKOLOW, et al, : 04-CV-397 (GBD)
:
Plaintiffs, : December 16, 2013
:
v. : 500 Pearl Street
: New York, New York
PALESTINE LIBERATION ORGANIZATION, et al, :
:
Defendants. :
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TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY DISPUTES
BEFORE THE HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: Good afternoon. This is Judge Ellis.
2 Can I have your appearances?

3 MR. YALOWITZ: Kent Yalowitz, Phil Horton, Arnold &
4 Porter for plaintiffs, Your Honor.

5 MS. FERGUSON: Laura Ferguson, Brian Hill and Mark
6 Roshan for defendants.

7 THE COURT: Thank you. This conference in Sokolow v.
8 Palestine Liberation Organization, et al., 04-CV-397. It is
9 Monday, December 16th at approximately three p.m.

10 The case has been referred for general pretrial and
11 I gather that Judge Daniels' chambers has informed the parties
12 that he wishes me to set the schedule for the general pretrial
13 order and any motions which the parties wish to file. Is that
14 correct?

15 MR. YALOWITZ: Yes, Your Honor. We gathered that
16 from Judge Daniels chambers Friday afternoon.

17 THE COURT: I understand that the parties have been
18 working towards trying to do the joint pretrial order by
19 December 23rd. Is that correct?

20 MS. FERGUSON: No, Your Honor. This is Laura
21 Ferguson for the defendants. It's our position that the
22 pretrial order and summary judgment brief are not due on
23 December 23rd and that it makes the most sense to defer the
24 pretrial order until the case has been sort of focused through
25 Daubert motions and motion for summary judgment.

1 THE COURT: That's not Judge Daniels' view and indeed
2 and referring me to his general rules it's his expectation
3 that you would do the joint pretrial order within 30 days of
4 the completion of discovery. I understand --

5 MS. FERGUSON: Your Honor --

6 THE COURT: I understand you have a different view of
7 it but the --

8 MS. FERGUSON: There was a scheduling order, Your
9 Honor, entered in 2001 that deferred the briefing of summary
10 judgment motions and pretrial submissions until a later
11 conference and then that conference was to have been in
12 January and that was a conference in which plaintiff's counsel
13 did not show up and then plaintiff's counsel subsequently sent
14 a letter arguing that it was too [inaudible] to set a schedule
15 for summary judgment briefing.

16 So it was our position that the default rule did not
17 apply because of the previous scheduling order and the
18 statements made by Judge Daniels at the August 2012 hearing.

19 THE COURT: Well --

20 MR. YALOWITZ: Your Honor --

21 THE COURT: Go ahead.

22 MR. YALOWITZ: I'm sorry, Your Honor. Please, you go
23 ahead.

24 THE COURT: I was going to say I was not told that
25 anything that Judge Daniels said in that conference changed

1 his rules but go ahead. What are you going to say, Mr.
2 Yalowitz?

3 MR. YALOWITZ: Thank you, Your Honor. I was going to
4 say that we -- from the plaintiff's side we have been working
5 very diligently to prepare the joint pretrial order. We would
6 like a little bit of additional time in order to winnow down
7 our exhibits and exchange proposed exhibit lists and
8 deposition designations with the defendants. We did propose a
9 schedule to them for exchanging exhibit lists and other pieces
10 of the proposed order this week if the court does not give
11 relief from the December 23rd deadline. We could certainly
12 meet the December 23rd deadline. In candor, I think we would
13 do a much better job with the additional 30 days that we've
14 requested in our letters to Judge Daniels but we're prepared
15 and can meet the court's December 23rd deadline although we
16 have asked for relief from that.

17 MS. FERGUSON: Your Honor, respectfully, I don't
18 think it makes any sense to move forward with a joint pretrial
19 order when there are so many issues to be resolved through
20 Daubert motions and motions for summary judgment and we
21 certainly strongly believe that in a case seeking \$3 billion
22 against the Palestinian Authority that we could have the
23 opportunity to brief these issues and we certainly are not in
24 a position to adequately brief a motion for summary judgment
25 on December 23rd. So if Your Honor is under the impression

1 that that is our operative deadline then we would certainly
2 need an extension.

3 THE COURT: Well, a couple of things. First of all,
4 I think that obviously each of the district judges does things
5 differently. It is my understanding from Judge Daniels'
6 communications and the letters that he sent and communications
7 he's had with you that he does intend to have the joint
8 pretrial order. One of the ways that he brings issues for
9 even summary judgment is to know what issues there are
10 outstanding in the case.

11 So while I think it's within the referral for me to
12 give you relief from the date it is my expectation that coming
13 out of our conference we will have a date for the final
14 pretrial order and that after the final pretrial order the
15 parties engage in additional briefing on the -- what the
16 defendants say as a summary judgment.

17 What I've indicated to counsel previously is that
18 the motions in limine would be decided in conjunction with the
19 summary judgment motion, however.

20 MS. FERGUSON: Your Honor, when you say in
21 conjunction with, do you mean filed simultaneously with or do
22 you mean included within the summary judgment briefing itself
23 in which case we would need -- well, in any event, we need
24 additional page limit. So we would need considerably more
25 pages if it's all to be encompassed within one omnibus brief

1 because we have ten liability experts that we need to address
2 on the plaintiff's side.

3 THE COURT: Well, I don't think it needs to be
4 incorporated although obviously to the extent that you're
5 going to make a motion for summary judgment you can ask him to
6 consider your motions in limine.

7 That is, if I understand correctly what the
8 defendants are going to be arguing in their motion in limine
9 is that certain of the experts should not be allowed to
10 present evidence.

11 MS. FERGUSON: Correct.

12 THE COURT: To the extent that you make your motion
13 for summary judgment and that depends on whether or not these
14 witnesses are -- the expert witnesses will be considered, he
15 will consider the motions in limine as one of the facts that
16 are either established or not established. So if he excludes
17 the experts then he'll know that that's a fact that will not
18 be considered for example.

19 MS. FERGUSON: Just to be clear, we had sought the
20 relief of briefing the Daubert issues first so that the
21 summary judgment briefing is less complicated because if we're
22 briefing the Daubert issue together with the summary judgment
23 briefing we have to consider numerous [inaudible] depending on
24 what opinions are coming in or coming out in terms of various
25 liability theories that the plaintiffs have indicated they may

1 rely on. So I guess in part --

2 THE COURT: I understand the point that you're making
3 and I can only tell you that to the extent that you have made
4 that issue known to Judge Daniels he has not changed his view
5 that he wants to consider the summary judgment motion together
6 with the motions in limine, the Daubert motions and any other
7 motion in limine that you wish to present whether it makes it
8 complicated or not.

9 MS. FERGUSON: Okay. So then I guess for us then it's
10 just a question of timing and page limit. I don't know in
11 what order you want to address that versus the timing of the
12 pretrial order.

13 THE COURT: Although for some lawyers the timing and
14 the page limits are related because --

15 MS. FERGUSON: Well, yes. As one of the drafters I'm
16 acutely [inaudible] to this issue, yes.

17 THE COURT: Well, let's first talk about the final
18 pretrial order which as you -- I'm sure as [inaudible] Judge
19 Daniels orders indicate that he does contemplate that that be
20 the first part of business and that will be the overall
21 framework in which he decides everything. That is when the
22 parties talk about what is being contested, what their
23 positions are, what their assertions are then when any further
24 motions are filed whether they're motions for summary judgment
25 or in limine he will be able to consider that in the total

1 context of what's being alleged in the case.

2 So I understand that the plaintiffs say that they
3 have been working toward it but the defendants say they
4 haven't and the plaintiffs said while they're prepared they
5 would appreciate a little more time. So I could -- in
6 obviously granting him more time I would ruin some people's
7 holidays but I'm sure that's a trade off you're willing to
8 take.

9 MR. YALOWITZ: We would appreciate the 30 days, Your
10 Honor.

11 MR. ROSHAN: Judge, this is Mark Roshan and I'm
12 going to turn this back over to Ms. Ferguson but we'd
13 appreciate a little bit more than the 30 days that the
14 plaintiffs are asking for the filing of the joint pretrial
15 order. We may have been operating albeit mistakenly it may be
16 according to Judge Daniels under the belief that the prior
17 statements that these dates would be set at a future date were
18 controlling and not that the 23rd was controlling. So we would
19 appreciate some time in addition to the 30 days requested by
20 the plaintiffs.

21 THE COURT: I can only tell you my honest view on
22 that is I thought the 30 days was me being generous.

23 MR. YALOWITZ: Thank you, Your Honor. We very much
24 appreciate it.

25 THE COURT: So you'll get the 30 days. Actually,

1 considering what's required in the final pretrial order I'm
2 not sure whether you'd be able to convince Judge Daniels that
3 I was wrong in giving you as much as a month.

4 MR. YALOWITZ: I'm assuming you're the final word on
5 this issue, Judge.

6 THE COURT: I think you've been reading between the
7 lines.

8 Well, we'll leave it at this. I think a month seems
9 to be adequate. I know that the plaintiffs have alleged that
10 they've been doing some work and if in getting together
11 that -- there prove to be any unworkable problems or anything
12 unexpected comes up that's a snag you will present to me and
13 not to Judge Daniels and I will consider it but I think
14 frankly -- I think you can do it in the month. I know that
15 the parties believe that it's sufficiently complicated
16 although I don't think I've ever seen a joint pretrial order
17 which could not have been done in the time that was allotted
18 by the court.

19 MR. YALOWITZ: I'm sure we'll be able to get it done
20 within the enlarged time, Your Honor. We very much appreciate
21 the indulgence.

22 THE COURT: January 22, 2014 for the joint pretrial
23 order.

24 Now, in theory the other motions that the defendants
25 -- I guess what the defendants wish to do is to then file a

1 summary judgment motion.

2 MS. FERGUSON: Well, we would also be filing Daubert
3 motions because --

4 THE COURT: Right.

5 MS. FERGUSON: -- expert's opinions are just
6 essential to the case.

7 THE COURT: I say the summary judgment motion because
8 I am -- what I plan to do is consider the summary judgment
9 motion schedule with the expectation that you will be
10 submitting whatever other motions so that they can be
11 considered while Judge Daniels considers the summary judgment
12 motion.

13 MS. FERGUSON: Yes.

14 THE COURT: So you're right in that it includes the
15 Daubert and other in limine motions but in essence basically
16 what he wants to do is consider the summary judgment motion.
17 So I don't know if you've thought about how much time you
18 would take given the limitations of including all of the other
19 motions because I don't know -- how many Daubert motions were
20 you planning?

21 MS. FERGUSON: Well, as many as ten, Your Honor,
22 because --

23 THE COURT: Ten? That's a number after nine?

24 MS. FERGUSON: Yes.

25 THE COURT: Okay.

1 MS. FERGUSON: They have ten liability experts.

2 MR. HILL: Your Honor, this is Brian Hill. If we're
3 going to -- if all motions in limine are going to be due
4 simultaneously we need to move on the damages expert as well I
5 suppose. So that would be as many as 14.

6 THE COURT: Okay. I'm giving you an opportunity to
7 express an opinion in the first instance.

8 MS. FERGUSON: I guess we would like to have until
9 January 22nd then because there is a substantial amount of
10 briefing.

11 THE COURT: Okay.

12 MR. YALOWITZ: Your Honor, January 22nd sounds good to
13 us. Normally at least in a lot of cases -- I think you're
14 right, every judge does it differently and cases -- some cases
15 have some individual tailoring but it's pretty common in the
16 Southern District of New York to file your summary judgment
17 brief the same day you file your joint pretrial order.

18 THE COURT: Well, I -- it's also true in a lot of
19 cases people don't get to file summary judgment motions
20 because it turns out that they have seen the writing on the
21 wall but in this case --

22 MR. YALOWITZ: That would be fine with us too, Your
23 Honor.

24 THE COURT: Who's speaking?

25 MR. YALOWITZ: It's Kent Yalowitz.

1 MS. FERGUSON: The defendants --

2 MR. YALOWITZ: Plaintiffs would like --

3 MS. FERGUSON: -- [inaudible] summary judgment.

4 MR. YALOWITZ: The plaintiffs would like a trial date
5 and we think that the prospect of summary judgment is to say
6 remote is being generous but you can't -- nobody can prevent
7 the defendants from filing their motion. They have to be
8 allowed to file it. So --

9 MS. FERGUSON: Obviously the defendants strongly
10 disagree. There are seven different cases essentially rolled
11 up in one lawsuit here. We have seven different incidents
12 involving a host of alleged perpetrators, many different
13 theories of liability. I mean thousands and thousands of
14 pages of documents that are basically inadmissible hearsay but
15 they will have to make evidentiary arguments about. It's a
16 very complex case and it simply would be highly prejudicial
17 for it to go to a jury in its current form.

18 THE COURT: Well, I know this may be a bit unfair but
19 I have to assume that to the extent that any party had been
20 contemplating motions such as this -- we're not starting from
21 scratch because before you could even make the representation
22 about how solid your motions are I'm sure there have been
23 memos and other things that have gone back and forth so that
24 it's more a question of pulling it together and putting it on
25 paper than trying to come up with theories.

1 MS. FERGUSON: Well, for example, with respect to the
2 Daubert motions we still don't have all of the transcripts
3 from the expert depositions. So -- there's also -- the
4 documents are foreign language documents. So there's
5 translation issues and it's a very big [inaudible] case. We
6 actually have been working on it but -- of course but
7 combining the Daubert and the summary judgment briefing is a
8 huge undertaking and a case of incredible importance to our
9 client and -- I can't overstate that point. This is a foreign
10 government that would be tried in front of a jury in New York
11 over charges of terrorism for acts that occurred over a decade
12 ago based on a lot of hearsay and expert summarizing hearsay
13 and it's just -- we'd really like an opportunity to be heard
14 why there is no admissible evidence linking our clients to
15 these attacks.

16 THE COURT: Well, let me just say that in the
17 beginning it's my view that every case that comes before the
18 federal court is a case of importance even if it involves pro
19 se's and it's just somebody's individual claim. I treat them
20 all that way. So while I understand for any individual party
21 there may be significant amounts of money, prestige, other
22 things involved, I think that all cases should be treated as
23 if the resolution of the case is the most important thing to
24 the litigants involved.

25 It's not my policy or practice to make it impossible

1 for people to do what they have to do but I also think it's
2 true that no matter what the court does the lawyers will fill
3 up whatever time you have given them. I don't do rocket
4 docket. I don't make people do things under unreasonable time
5 constraints but I always leave it open for somebody to
6 convince me that they have had inadequate time or there's some
7 problem. I think even in this case we've adjusted a number of
8 time frames because of issues that have come up including
9 issues involving translations and other problems. So whatever
10 we set will -- I'll always have an open mind but the parties
11 still have to show me what they've done and where they are.

12 So with respect to the motions, I'll give you until
13 February 28th.

14 MS. FERGUSON: Thank you, Your Honor.

15 THE COURT: And for the -- I know that the plaintiffs
16 haven't seen the motions yet but it seems to me that you want
17 to do a response as quickly as possible.

18 MR. YALOWITZ: I think 30 days ought to be adequate,
19 Your Honor. If we run into trouble -- if 30 days is
20 appropriate in your view we would appreciate it and subject to
21 the same thing you said before if we ran into trouble.

22 THE COURT: I'll give the defendants two weeks for a
23 reply if any. Again, since I'm going to be in control of this
24 I do want the parties to understand that as long as you make
25 this a priority and you're putting the time and effort into

1 getting these things done I'll listen to anything that comes
2 up in terms of the difficulties that you -- that arise.

3 We'll make this order.

4 MR. YALOWITZ: Before we leave the scheduling, could
5 we also have a date for jury instructions?

6 MS. FERGUSON: Before we leave summary judgment
7 briefing, under the rules we would normally just get 25 pages
8 and we previously asked for 75 again because there are
9 essentially seven cases rolled into one lawsuit.

10 THE COURT: When you say seven cases, you mean
11 seven --

12 MS. FERGUSON: Seven separate alleged attacks
13 involving in each case different groups, different theories,
14 different alleged perpetrators. I mean a host of experts.
15 It's simply -- we couldn't do the issue justice in 25 pages.

16 THE COURT: Well, let me ask you. The plaintiffs
17 agree that it's -- in terms of the seven -- I mean there are
18 seven incidents; is that correct?

19 MR. YALOWITZ: Your Honor, it's certainly correct
20 that there were seven terrorist attacks in the case. There's
21 an enormous amount of commonality and there's an enormous
22 amount of overlapping evidence and the idea that this was just
23 seven random cases slapped together I don't -- I don't think
24 that's what the defendants are saying and if they are --

25 THE COURT: I didn't understand them to say there

1 were seven random slapped together although I'm not -- and I
2 haven't seen --

3 MS. FERGUSON: I --

4 THE COURT: Let me just -- I haven't seen the expert
5 reports but you're not suggesting that the expert reports
6 treat them in such a way that they talk about them as seven
7 separate incidents but that they -- don't they -- don't the
8 expert reports talk of them together?

9 MS. FERGUSON: In some respects the experts do
10 address the incidents separately and for each of the seven
11 incidents you have to sort of analyze separately the different
12 categories of evidence that the plaintiffs are relying on and
13 it's different for each of the cases. So I mean you really do
14 have to address the cases on an incident by incident basis and
15 they really -- they truly do pose different issues, different
16 legal issues, different evidentiary issues as to each
17 incident.

18 MR. YALOWITZ: Judge, to add to that. This isn't a
19 case where there's a gang going around doing seven crimes in a
20 row like you'll see in some cases. The plaintiffs claim and
21 their experts claim that there were different actual
22 perpetrators for each incident. For the most part there's one
23 or two individuals who overlap in one or two incidents. They
24 have brought it against the PA and the PLO of course and we
25 are the defendants but as to the incidents themselves the

1 alleged perpetrators are different across the seven incidents
2 and they're spread over a two year -- a two or three-and-a-
3 half year period. So there are great differences among the
4 incidents.

5 MS. FERGUSON: And --

6 MR. YALOWITZ: Some of them you have [inaudible] some
7 material support and others -- they've got other theories they
8 started to wave around a little bit. So we have to address
9 the various theories that have been put forward by the various
10 experts. Their experts describe them incident by incident.

11 MS. FERGUSON: And, Your Honor, if I could just add
12 that the question here is PA and PLO liability and in most
13 cases the plaintiff seems to be arguing some sort of secondary
14 theory of liability and those issue are very complicated and
15 just in terms of material support alone there's many different
16 possible theories for material support. So we have to address
17 each of those. We have to address --

18 THE COURT: Okay. Here's what I'm going to do again
19 bearing in mind that when I'm setting page limits for my own
20 cases I'm very conservative and certainly I'm a little
21 concerned about setting page limits when I'm not actually
22 going to be considering the motion. But based upon what
23 you've told me I'll go ahead and grant you 50 pages. When you
24 get the final pretrial order if there's anything about the
25 final pretrial order which you think supports the argument

1 that you've made then let me -- let's air it out that way so
2 that I can do it in a context of the way the issues are
3 presented in the final pretrial order.

4 MS. FERGUSON: All right, Your Honor. Thank you.

5 MR. YALOWITZ: So, Your Honor, that would bring us to
6 jury instructions.

7 THE COURT: Yes. Well --

8 MR. YALOWITZ: If I may, I would suggest that we file
9 jury instructions 30 days after we submit the joint pretrial
10 order.

11 MS. FERGUSON: That won't be workable for us because
12 that's the time we were preparing our summary judgment brief
13 and Daubert motions and also -- we believe that a lot of these
14 issues will be narrowed and it makes more sense to do jury
15 instructions when we have a better handle on what the case
16 looks like.

17 MR. YALOWITZ: I'm not -- we also may have some
18 motion practice we want to do. It sounds like in limine. I
19 think the court is expecting all in limine briefing to be done
20 on the February 28th schedule. So both sides will certainly be
21 busy. On the other hand, despite what I'm hearing from the
22 defense I actually don't think the case is all that
23 complicated and I don't think that jury instructions in an
24 anti terrorism case are all that complicated. I just think
25 that the sooner we get those done the better it is and it

1 certainly will help the parties -- they have to be looking up
2 the applicable legal regime anyway to write their summary
3 judgments briefs. So I think it's customary to get them done
4 quickly after the JPTO and we'd certainly like to follow that
5 custom here, Your Honor.

6 THE COURT: Well, I did not read Judge Daniels' rules
7 and I have not asked -- many of the judges require that the
8 parties agree on a request to charge and even on voir dire
9 questions. I don't think it is required that, although some
10 of the judges sort of do a modification, that is you present
11 joint charges and voir dires except where you disagree and
12 therefore they would only -- it would be presented by either
13 side would be things that one party thinks are either
14 inappropriate or believe that are necessary.

15 So it's not entirely clear to me that the parties
16 would be having a disagreement on most of the charges. So I
17 guess in that respect I would agree with the plaintiffs on
18 this but are you anticipating that there will be -- with
19 respect to the requested charge, are you expecting there to be
20 a lot of things you'll disagree with or just --

21 MS. FERGUSON: Absolutely, Your Honor. This is an
22 area where a lot of -- there are many issues that have just
23 not been litigated yet. There's lots of issues of causation
24 and intent and what needs to be shown. The whole issue of
25 respondeat superior in the context of this statute hasn't

1 really been litigated. There's just a lot of unanswered legal
2 questions and I expect there to be many areas of disagreement.
3 This is not a well developed area of the law.

4 THE COURT: Well, here's what we're going to do. I
5 mean obviously the parties have some work and we are talking
6 about request to charge and voir dire and the reality is that
7 those are really tied to the trial itself and we haven't set a
8 trial date. So what I'll do -- I think the parties -- again,
9 as I've said before, I expect that you've been sort of at
10 least banding this about even if you haven't sat down and
11 started to seriously give it a go but when counsel can tell me
12 that they're familiar enough with the area to know how
13 desperate the parties positions are likely to be I have to
14 assume that they haven't been sitting idly by and have been
15 doing some homework.

16 So where we'll leave that is this. I will -- we'll
17 schedule another conference as we see how things are going
18 along because while I think we'll set a date for the charges
19 and the voir dire it's not something which is going to hold
20 anything up at this point.

21 MR. YALOWITZ: That sounds like a good plan to me,
22 Your Honor.

23 THE COURT: Okay. But I will be speaking with you
24 when the new year draws so that we can reassess. I also -- I
25 need to see if at some point we'll be in a position to talk

1 about an actual trial date but I think --

2 MR. YALOWITZ: I was going to raise that as well with
3 you, Your Honor. What you said about every case being
4 important to the litigants is really true. I've spent a lot
5 of time talking with people about being judges and that's a
6 theme I hear very often and I agree with it and certainly from
7 the plaintiff's perspective I know that the individual
8 plaintiffs I've had the privilege of meeting with and visiting
9 with are very anxious to reach closure in this case and I
10 don't want to belabor it but I'm sure you can imagine that
11 this is a very, very important case to those families.

12 MS. FERGUSON: And our side the plaintiffs are
13 seeking \$3 billion in damages [inaudible] foreign government
14 [inaudible] us.

15 THE COURT: Let me say this. While I believe that
16 Judge Daniels will even empower me to set the trial date, I
17 have not talked with him about his schedule and before we can
18 do that I need to know, for example, if he's got any criminal
19 matters which are coming up and what the timing on those are
20 because obviously that would -- no matter how important any
21 individual party or judge thinks cases are, their obligations
22 in criminal matters which trump even the most important of
23 civil cases. So I'll have to have a talk with him and see
24 what time frame next year he's likely to be available so
25 that -- and part of that may be what you put in the final

1 pretrial order about how long the trial is going to last.

2 Do you have some idea right now?

3 MS. FERGUSON: I'm not sure what fact witnesses the
4 plaintiffs would have, Your Honor. I think it's a case that
5 seems to be largely a matter of experts.

6 MR. YALOWITZ: Your Honor, we believe the case is
7 likely to take with both sides, plaintiff's side and
8 defendant's side we suspect the case will be less than two
9 months but probably not a lot less.

10 MR. HILL: Your Honor, this is Brian Hill. Just to
11 remind you of an issue that came up when we first met with you
12 to schedule this back in September 2011, I mean we are
13 reserving the right to seek severance at trial and that's all
14 [inaudible] what if any of these incidents are going to go to
15 trial once we get summary judgment motions. So it's going to
16 be a little hard to tell what the length of the trial would be
17 and whether there would be more than one and that issue is
18 still to be decided.

19 THE COURT: Okay. Well --

20 MR. YALOWITZ: We would strongly oppose any
21 bifurcation or trifurcation or [inaudible] or anything like
22 that.

23 THE COURT: Well, I think if not explicitly stated
24 the question of severance ought to be in the joint pretrial
25 order. These are factors that Judge Daniels will want to

1 consider in terms of how he deals with these and also in terms
2 of setting a trial date because I'll have to talk with him
3 about that too.

4 MS. FERGUSON: So, Your Honor, is there a date for
5 another conference?

6 THE COURT: Not yet.

7 MS. FERGUSON: Not yet, okay. We'll wait.

8 THE COURT: The new year will bring with it some
9 challenges for me that I need to deal with and I know that
10 I'll be on criminal duty for part of that and things get
11 constricted on either side of criminal duty. So I probably
12 won't have a good sense until the beginning of January.

13 MR. YALOWITZ: So we'll look forward to speaking with
14 Your Honor in the new year with regard to the -- I'm sure that
15 you and Judge Daniels will [inaudible]. I did happen to look
16 while we were speaking at his individual practices and he is -
17 - his default is for jury -- request to charge and voir dire
18 is 30 days following the JPTO and we would certainly be happy
19 to go with the default rule, Your Honor.

20 THE COURT: Okay.

21 MS. FERGUSON: We would like additional time given
22 the summary judgment and motions in limine briefing schedule.

23 THE COURT: Well, that -- and if you've looked up his
24 rules you know that although that's the default the
25 alternative is to tie it to the trial date and at least two

1 weeks before the trial.

2 MR. YALOWITZ: Correct.

3 THE COURT: We'll probably -- we'll definitely fall
4 within those parameters.

5 MR. YALOWITZ: Okay. That's very encouraging.

6 THE COURT: Okay. We'll be adjourned. Thank you.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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5 _____
6 Shari Riemer

7 Dated: January 16, 2014
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